

capacity to a cont.

meaning:

It means parties should be competent to make cont it is 1 of the essential element to form valid cont

Sec 11: who r competent to cont:  
every person is competent to cont who:

- has attained age of majority
- is of sound mind

is not disqualified from law to which he is subjected to.

A) Age of Majority

- As per Indian majority act 1875 Every person who is domiciled in India shall attain age of majority on completion of 18 yr's of Age.

- A person below 18 yr's of Age would be considered as minor

Law relating to minor: Any 7-8 points

1. Cont made with or by minor is void ab initio:  
A minor is not competent to cont and any agree with minor is void ab initio.

Case Law: Mohori Biori vs Dharmadas Ghosh

2. No Ratification after attaining majority:  
A minor cannot ratify agree on attaining majority as originally it was void ab initio.

3. Minor can be beneficiary or can take benefit out of contract:

- A minor though not competent to contract but not prevents him from making other party bound to him.
- A promissory note duly executed in favour of minor is valid.
- minor cannot become partner in partnership firm but he can be admitted to benefits of firm.

4. A minor can always <sup>Childhood</sup> plead minority:

A minor can always plead for minority & is not stopped to do so even if he has taken any loan or entered into contract by falsely representing that he was major.

- Rule of Estoppel do not apply on a minor.
- He can always ~~pledge~~ plead for minority in his defence.

5. Liability for Necessaries:

- In case of necessary supplied to minor or to any other person to whom he is legally bound to support is governed by sec 68.

- Claim for necessary supplied to minor is valid - enforceable by law.

- He shall be liable for value of necessary  
supplied to minor

- Only property shall be liable & no  
personal liability will occur.

Minor's estate shall be liable only if following  
condition is fulfilled.

1. Cont should be for G which should  
reasonably support in his life.

2. A minor must not have already supplied  
of necessary.

3. Necessary means those things which are essentially  
needed by minor.

4. They do not include cost of luxuries or costly  
or unnecessary articles.

5. Necessary means all such articles which person  
supply to infant in a class of society to  
which he belongs.

6. Expenses on minor education & any other  
funeral expenses included in necessary.

6. cont by Guardian:

- cont. made by guardian which is within his competence & which is beneficial to minor is valid cont.
- All cont. made by guardian is not valid.
- cont. made by guardian for purchase of immovable property is not valid.
- ~~cont.~~
- In case of certified guardian appointed by court, he can sale minor's property with sanction of court.

7. No specific performance?

minor's cont. is void ab initio & Question of specific perf. does not arise.

8. No Insolvency:

since minor is incapable of contracting debt & dues payable from property only, which means minor cannot be declared as insolvent.

9. Partnership:

minor cannot become partner but he can be admitted to benefits of partnership firm.

10.

Minor can be an Agent:

- He will not be liable for his principal for his acts.
- He can be Agent
- minor can draw deliver & endorse negotiable instrument without himself being liable.

11. minor cannot bind parent or guardian

- minor cannot bind p without authority express or implied
- parent will be liable only when child is acting as an agent of them

12. Joint contr by minor & Adult

- In such case adult will be liable & not minor.

13. Surety for minor:

- where adult stands for guarantee for minor then adult is directly liable as a surety when minor fails to repay

14. Minor as shareholder:

- A minor cannot become shareholder in co.
- If by mistake he becomes member co. can rescind the contr. & remove his name from Register.
- But minor with help of guardian can become shareholder of fully paid up share.

15. Liability for torts:

- A tort is a civil wrong doing
- minor is liable for tort unless its breach

of cont.

## B. Person of Sound mind

A person is said to be of sound mind when he is capable of understanding the terms & conditions of contract, also he is capable of making rational decision.

\* person who is usually of unsound mind but occasionally of sound mind can enter into contract when he is of sound mind.

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## C. Contract by disqualified person

Law states that certain persons are disqualified from contracting & contract with such person is void.

→ Such disqualification may arise from political status, corporate status, legal status etc.

Following are persons that fall under this category:

- Foreign Sovereigns & Ambassadors
- Alien Enemy
- Convicts
- Insolvent

## Free consent

means  
→ consent ~~between~~ <sup>means</sup> agreement upon same thing  
& in same sense.

- Every cont must have consent & that to be free one

- Free consent means ~~with~~ consent given without any pressure.

- In other words, consent is said to be free if that is not caused by ~~me~~ because of ~~me~~ because of under influence, fraud, misrepresentation.

### Elements of Free consent.

#### 1. Coercion: Physical damage

It means committing or threatening to commit any act forbidden by Indian penal code or detaining or threaten to retain any property with the intention of causing harm to a person.

#### Effects

- cont is voidable at the option of <sup>Agreed</sup> party
- when cont is <sup>cancel</sup> rescinded, party rescinding it must restore any benefit received under cont
- A person to whom money has been paid or delivered must repay or returned it

## 2. Undue influence: <sup>strif definit</sup> ~~full explain~~ (X)

Sec 16: A cont is said to be induced by undue influence when relation b/w parties are such that 1 person is in position to dominate will of another person, & uses that position to obtain ~~undue~~ advantage.

### Following 2 Essentials:

1. Relation b/w parties: A party can be influenced by other when there ~~is~~ exist some near R/ship.

2. Position to dominate will: ✓

A person is deemed to be in dominant position in following circumstances.

1) Real & apparent authority ↓

A Real authority over other.   
 ex: master & servant, doctor & patient.

2) Fiduciary R/ship L

where a relation of trust & exist b/w parties they r said to be in F.R.   
 ex: Father & son, Teacher & student

3) Mental distress:

Undue inf can be used agt a person whose mental capacity is permanently or temporarily affected.

4) unconscionable bargain: X

where a party to a cont is in a position to dominate will of other & cont appears to be unfair then it is



Presumed that it has been obtained by UI.

3. Object of cont must be to take undue advantage of other person.

4. Burden of proof.  
—||— will always be on dominant party

✓ (Sec 19 A): contract induced by UI is voidable in nature, court may set aside cont as it may seem just or absolutely.

3. Fraud (Sec. 17)  
Definition

Fraud means & includes any of the following acts committed by party to a cont. or with his connivance or agent with intention to deceive other party thereto or his agent with intention to enter into cont.

It includes <sup>suggestion</sup>

- 1) Representation of fact which is not true & other person who does not believe it to be true
- 2) Active concealment of fact after having knowledge of it.
- 3) Promise made without intention to perform.
- 4) Any act fitted to deceive.
- 5) Any act which law declares fraudulent.

Rescind + Suit for damages + insist on performance

mere silence as to the facts likely to affect willingness of person is not fraud unless ~~stated~~

- Silence omits to speak or
- it is duty of person to speak.

Effect of fraud!

- When cont is caused by fraud it is voidable at the time option of AP & following Remedies available

- He can Rescind cont within Reasonable time
- He can sue for damage
- He can insist on performance of cont if representation had been made true.

Mere silence is not fraud. As per doctrine of caveat emptor. let the buyer beware. seller is responsible.

Silence is under no obligation to disclose whole truth to other party, But silence is treated fraud in following cases

Exception:-

- 1) Duty of a person to speak: When circumstances of case such that it is duty of a person to speak then silence omits to fraud.

Following cont under this category

- 1) Fiduciary R/L - A person in whom confidence is reposed is under duty to act with utmost Good faith & make full disclose of all facts concerning Agmt.

### 2. Cont of Insurance

In cont of marine, Fire & life insurance there is implied condition that full disclosure of material fact shall be made otherwise insurance can be voided.

### 3 Cont of marriage

Every material fact must be disclosed by the parties to a cont of marriage.

#### A. Cont of family Settlement

It requires full disclosure of material fact within knowledge of parties.

#### 5. Share Allotment Cont.

A person issuing prospectus at time of public issue of shares & debentures of co have to disclose all material facts.

### 2. Where science itself is equivalent to Speed

v.2 (Exception to Sec 19)

- In case of fraud cont is not voidable if aggrieved party had option to discover truth by ordinary diligence.

## Mistake

Mistake refers to innocent or erroneous belief which leads other party to misunderstand others.

→ Mistake can be unilateral or bilateral.

1. Bilateral mistake is a mistake when both parties to a contract are under mistake. — voidable
2. Unilateral mistake is when 1 party to a contract is under mistake. — voidable